

FCC MAIL SECTION

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DISPATCHED BY Before the
FEDERAL COMMUNICATIONS COMMISSION DA 96-1833
Washington, D.C. 20554

In the Matter of)	MM Docket No. 96-223
)	
Quality Broadcasting, Inc.)	File No. BR-951130C7
)	
For Renewal of License)	
for Station WNEX(AM))	
Macon, Georgia)	

HEARING DESIGNATION ORDER

Adopted: October 22, 1996

Released: November 7, 1996

By the Assistant Chief, Audio Services Division:

1. The Assistant Chief, Audio Services Division, Mass Media Bureau has before him for consideration: (a) the captioned application for renewal of license filed by Quality Broadcasting, Inc. ("Quality"), licensee of AM Station WNEX, Macon, Georgia and (b) the results of an investigation into the station's silent status.¹

2. The Commission's records indicate that WNEX(AM) suspended operations sometime between August 1994 and July 1995. On July 6 and August 16, 1995, the Commission sent inquiry letters and requested Quality to submit information concerning its compliance with Section 73.1740 (Minimum Operating Schedule) of the Commission's Rules. The letters, both of which were directed to Quality at its then last known address-of-record and also to other addresses listed on its ownership reports, were returned to the Commission by the U.S. Postal Service. However after numerous attempts, the staff located the attorney who is currently representing the licensee.

3. On June 19, 1996, Quality's attorney filed a request for special temporary authority to authorize WNEX(AM) to remain silent. He indicated that the studio was destroyed by a fire in August 1994, and since then, the station had been vandalized several times. He further indicated that Quality has diligently attempted to locate a buyer for the station, after a proposed assignee refused to consummate an assignment of license transaction (File No. BAL-940629EA), which was granted on August 28, 1994. Additionally, he

¹ The Mass Media Bureau has been delegated authority to designate for hearing the renewal of license applications of silent broadcast stations. See Moenkopi Communications, Inc., 8 FCC Rcd 3990 (1993).

asserted that since all attempts to assign the license of WNEX(AM) had failed, Quality currently plans to assign the license of WNEX(AM) to the licensee's son. The attorney also represented to the staff that he would file a status report to the Commission regarding a timetable as to when an assignment of license application would be filed.

4. On September 16, 1996, Quality's attorney filed a letter indicating that Quality would file an application for approval of the sale of WNEX by September 30, 1996. However, our records reveal that an application for the assignment or transfer of control of the station's license has not been filed, to date. Thus, WNEX(AM) has been off the air at least for over one year, is not presently authorized to remain silent, and has not demonstrated that it either diligently attempted to resolve the station's problems or that causes beyond its control prevent the expeditious resumption of operations. Consequently, Quality is in apparent violation of Sections 73.1740(a)(4)² and 73.1750³ of the Commission's Rules.

5. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the renewal of license application of WNEX(AM), Macon, Georgia, IS DESIGNATED FOR HEARING at a time and location to be specified in a subsequent Order, upon the following issues:

- (1) To determine whether Quality Broadcasting, Inc. has the

² Section 73.1740(a)(4) provides:

"In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control the licensee make it impossible to comply with the allowed period, an informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary."

³ Section 73.1750 provides:

"The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation."

capability and intent to expeditiously resume the broadcast operations of WNEX(AM), consistent with the Commission's Rules.

- (2) To determine whether Quality Broadcasting, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.
- (3) To determine in light of the evidence adduced pursuant to the preceding issues, whether grant of the subject renewal of license application would serve the public interest, convenience and necessity.

6. IT IS FURTHER ORDERED, That, in the event it is determined that grant of the renewal of license application would serve the public interest, convenience and necessity, the grant will be conditioned on the expeditious resumption of operation, the precise period of time to be established in the hearing. Failure to resume operations within the time specified in the condition will result in the cancellation of the license and the deletion of the station's call letters.

7. IT IS FURTHER ORDERED, That, to inform Quality Broadcasting, Inc. of the issues specified against it, a copy of this Order will be mailed by certified mail/return receipt requested to:

Quality Broadcasting, Inc.
5265 Riverview Road
Atlanta, Georgia 30327

Kevin R. Armbruster, Esq.
Cushing, Morris, Armbruster & Jones
2110 Peachtree Center Cain Tower
Atlanta, Georgia 30303

8. IT IS FURTHER ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, both the BURDEN OF PROCEEDING with the introduction of evidence and the BURDEN OF PROOF with respect to the issues specified above shall be upon the LICENSEE, Quality Broadcasting, Inc.

9. IT IS FURTHER ORDERED, That, to avail itself of the opportunity to be heard, the licensee, pursuant to Section 1.221(c) of the Commission's Rules, SHALL FILE with the Commission, in person or by attorney, within twenty (20) days of the receipt of this Order a WRITTEN APPEARANCE stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

10. IT IS FURTHER ORDERED, That the licensee herein shall, pursuant to Section

311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rules, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Stuart B. Bedell
Assistant Chief, Audio Services Division
Mass Media Bureau